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STUDENT LOAN SERVICING ALLIANCE

August 29, 2022

VIA ELECTRONIC SUBMISSION

Board of Governors of the Federal Reserve System
Docket No. R-1775, RIN 7100-AG34
regs.comments@federalreserve.gov

RE: NPRM Implementing the Adjustable Interest Rate (LIBOR) Act | Docket No. R-1775 | RIN 7100-AG34

Dear Board of Governors:

The undersigned trade associations are submitting these comments in response to the Notice of Proposed Rulemaking ("NPRM") published in the *Federal Register* on July 29, 2022. The NPRM contains proposed rules ("Proposed Rules") implementing the Adjustable Interest Rate (LIBOR) Act (the "LIBOR Act"). The Proposed Rules generally propose adoption of a forward-looking term rate based on the Secured Overnight Financing Rate ("SOFR" and "Term SOFR") as the "Board-selected benchmark replacement" for cash transactions, other than "covered GSE contracts," that do not have adequate fallback language. These contracts are generally referred to as tough legacy contracts. For covered GSE contracts, the Proposed Rules would adopt historical 30-day Average SOFR as the Board-selected benchmark replacement. Covered GSE contracts are defined to include certain mortgage-related transactions to which a government sponsored entity is a party. The rationale given in the Proposed Rules for this exception is that it is intended to enhance liquidity for these instruments in light of the recent use by GSEs of historical 30-day Average SOFR in newly issued instruments.

The NPRM requests comment as to whether there were "any categories of covered contracts for which the Board should consider an alternative SOFR-based Board-selected benchmark replacement?" In light of the considerations discussed below, we respectfully request that an additional exception to the general selection of Term SOFR as the Board–selected benchmark replacement be added for student loan financings that are predominantly secured by loans made under the Federal Family Education Loan Program ("FFELP").

FFELP is one of the various federal student loan programs previously established by the Higher Education Act. The membership of the trade association signatories directly or indirectly includes all the major holders of FFELP loans. Therefore, for purposes of responding to the NPRM, we are able to represent the perspective of the larger market participants with interests in FFELP. We write to you today to share our expertise in support of the Board's and Congress's stated goals of uniformity in determining the appropriate benchmark replacement rate for asset-backed securities that finance FFELPP loans ("FFELP ABS").

Benchmark Replacement Rate for LIBOR-Indexed FFELP ABS Needs to be Consistent with the Replacement Rate Provided for FFELP in the LIBOR Act

Section 109 of the LIBOR Act amended a significant calculation for student loans made under FFELP within the Higher Education Act of 1965, changing the economics of payments made to FFELP loan holders in a very specific way. As we understand, Section 109 of the LIBOR Act was intended by Congress to provide a clear, uniform transition process away from the London Interbank Offered Rate ("LIBOR") for FFELP – the only contracts for which federal statute[1] had specific language that referenced LIBOR. We believe that the FFELP provisions in the LIBOR Act were further designed to create a match between the economics of the FFELP loan prior to the cessation of LIBOR and the economics of the FFELP loan after the LIBOR transition by moving to an alternative index that was a closely aligned as possible to the existing LIBOR rate.

By way of background, because loans offered through FFELP were funded by private lenders, the Department of Education encouraged participation in the program by (i) providing a guarantee of full or partial loan repayment in certain qualifying circumstances such as death or disability and (ii) providing a mechanism to ensure a minimum payment would be received quarterly on each loan – this mechanism is called the Special Allowance Payment ("SAP"). [2] Changes made to FFELP ultimately resulted in private lenders receiving only the SAP on loans they financed because of an obligation to rebate the U.S. Government for the borrowers' payments.

The yield on FFELP SAP paid to lenders of FFELP loans is currently calculated using the daily average of 1-Month LIBOR over a quarterly accrual period. Interest on variable rate asset-backed securities ("ABS") liabilities which securitize FFELP loans is currently calculated using discrete LIBOR, resetting monthly or quarterly, for 1-Month LIBOR or 3-Month LIBOR, respectively. The economic relationship between FFELP SAP's daily average LIBOR rate and the FFELP ABS's monthly or quarterly LIBOR rate has already been priced into the market by investors and issuers.

The LIBOR Act provided that for FFELP SAP, the formula for calculating SAP will be revised by substituting daily average 30-day Average SOFR for daily average 1-Month LIBOR in effect for such quarter, when 1-Month LIBOR ceases publishing or is non-representative. The LIBOR Act was silent on what the corresponding SOFR rate would be for existing FFELP ABS contracts that securitize FFELP loans. However, in the Proposed Rules, the Board proposes to select CME Term SOFR plus applicable tenor spread adjustment as the benchmark replacement for all transactions (including FFELP ABS) other than derivative transactions and covered GSE contracts.

Response to Proposed Rulemaking

As part of the Proposed Rules, the Board requested feedback on whether there are any categories of covered contracts for which the Board should consider an alternative SOFR-based benchmark replacement rate.

Are there any categories of covered contracts for which the Board should consider an alternative SOFR-based Board-selected benchmark replacement? What aspects of the nature, circumstances, or characteristics (e.g., issuer type, lender type, borrower type, structure, use) of those contracts warrant consideration of a different SOFR-based benchmark replacement?

All contracts related to the financing of FFELP loans, specifically FFELP ABS, should be treated uniquely, similar to the treatment provided for covered GSE contracts. Indeed, in the Proposed Rules, the Board addresses the unique circumstances surrounding the Federal Housing Finance Agency and the entities it oversees stating its

[1] Section 438(b)(2)(I)(viii) of the Higher Education Act (20 U.S.C. 1087-1(b)(2)(I)(viii)).

[2] See Appendix A for more information on FFELP SAP.

intent "to enhance liquidity for both these newly issued and legacy LIBOR-based products." We respectfully request that the same exception be made for FFELP ABS.

Specifically, for FFELP ABS, we request that the Board select Average SOFR as the SOFR-based Board selected benchmark replacement rate to align with the legislative treatment of FFELP SAP[3], which will ensure uniformity and a smooth transition away from LIBOR without disruption to the holders of the FFELP ABS notes such as retirement savings funds, pension funds, and state non-profit organizations. The selection of Average SOFR as the benchmark replacement rate will preserve the current economic relationship that exists between FFELP SAP and FFELP ABS, and many newly issued FFELP ABS securitizations have used the 30-day Average SOFR as a benchmark, which indicates investor support for this structure. Just as Congress directed the treatment of FFELP SAP to be unique to FFELP, the Board should treat the financing of FFELP through FFELP ABS uniquely as well.

We are deeply concerned by the possibility of the Board selecting a replacement benchmark rate for FFELP ABS other than the rate specified by Congress for FFELP SAP. Applying a CME Term SOFR rate as the benchmark replacement rate for FFELP ABS would result in a mismatch in funding rates between the FFELP assets and FFELP ABS, and an economic relationship that is materially different from the one contemplated at original issuance of the FFELP ABS. It is very plausible that this mismatch could result in investors in FFELP ABS being harmed due to potential disruptions in bond interest payments, negative credit ratings actions, or the introduction of new risk to the holders. Our request eliminates the risk of a mismatch while also being consistent with the clear legislative intent of the LIBOR Act.

We thank you for the opportunity to provide our industry expertise and are happy to discuss any clarifications that may be helpful. If you would like to discuss the comments provided, please contact any one of the signatories below.

Respectfully submitted,

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[3] Adjustable Interest Rate (LIBOR) Act, Public Law 117-103, div. U, Section 109.

Appendix A

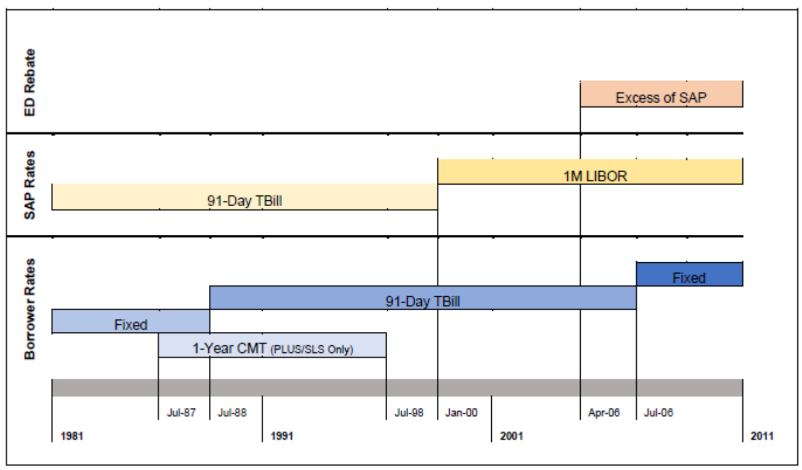
What is the FFELP Special Allowance Payment?

The FFELP Special Allowance Payment, or SAP, is calculated quarterly by first calculating a minimum expected rate, or "SAP Rate". For loans disbursed prior to January 1, 2000, the SAP Rate is calculated using the 91-Day T-Bill rate. For loans disbursed on or after January 1, 2000, the SAP Rate is calculated using the one-month USD LIBOR ("1M LIBOR") or the 3-month commercial paper rate ("3M CP"). The SAP is then calculated by netting the Borrower Rate and the SAP Rate. If the Borrower Rate is less than the SAP Rate, the lender will receive the SAP.

SAP Index:	The average of the index rate used to calculate SAP over the quarter, specified under FFELP
SAP Margin:	The spread used to calculate SAP, specified under FFELP
SAP Rate:	[SAP Index] + [SAP Margin]
SAP:	The greater of zero and "[SAP Rate] – [Borrower Rate]" divided by 4

The Consolidated Appropriations Act of 2012 gave FFELP loan holders the option to elect to substitute 1M LIBOR for the 3M CP for loans disbursed on or after January 1, 2000. As a result, all SAP-eligible FFELP loans disbursed before January 1, 2000, are indexed to the 91-Day T-Bill and those disbursed on or after January 1, 2000, are indexed to 1M LIBOR or 3M CP.

Loans disbursed on or after April 1, 2006 are subject to an excess interest rebate, or "ED Rebate". The ED Rebate is calculated by netting the Borrower Rate and the SAP Rate. If the Borrower Rate is greater than the SAP Rate, the difference is the excess interest which is paid to the Department of Education. **A FFELP loan holder's yield on these loans is only the SAP Rate**, with the Department of Education receiving the borrower payment.



Loan Disbursement Date	Borrower Index	SAP Index	ED Rebate	Index Received
Before 06/30/1988	Fixed	91-Day TBill	No	Greater of the rates
07/01/1987 - 06/30/1998 PLUS/SLS Loans Only	1-Year CMT	91-Day TBill	No	Greater of the rates
07/01/1988 - 01/01/2000	91-Day TBill	91-Day TBill	No	Greater of the rates
01/01/2000 - 04/01/2006	91-Day TBill	1M LIBOR or 3M CP	No	Greater of the rates
04/01/2006 - 06/30/2006	91-Day TBill	1M LIBOR or 3M CP	Yes	1M LIBOR
After 07/01/2006	Fixed	1M LIBOR or 3M CP	Yes	1M LIBOR